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From:

Sent: Wed 1/14/2009 4:03 PM

To:

Cc:

Subject: RE: TEFRA/disclosure question

If the partners settled after the case became docketed, you are required by Tax Court Rule 248 to disclose the identity of the settled partners to the TMP.

If the settlements occurred before the case became docketed, there is an arguable disclosure problem because partners who have settled are no longer parties to the TEFRA administrative proceeding under section 6103(h)(4)(A) pursuant to *Abelein v. United States*, (9th Cir. Case). Nevertheless, the remaining partners have the right to consistent settlements under section 6224(c)(2). The TMP is required to forward notice of such settlements to the remaining partners under Treas. Reg. 301.6223(g)-1(b)(iv). Subsection -1(a)(2)(i) provides that the TMP does not need to notify partners whose items have previously converted to nonpartnership items (by settlement or otherwise).

Based on the forgoing, we disclose pre-litigation settlements to the TMP so that he can forward the settlement terms to partners who can then exercise their consistent settlement rights. Disclosure is permitted since the settling partners were parties to the proceeding under section 6103(h)(4)(A) before settlement and the remaining partners have the right to know of the settlement because it affects their own "consistent" liability under section 6103(h)(4)(B) ("directly related to the resolution of an issue in the proceeding").

[REDACTED]